

passion and conviction, of strength and responsibility, of growth and prosperity.

One of the biggest straw men in this debate is that of the so-called litmus test—no one should have to take a litmus test to attain standing in the Republican Party, and I don't know of anybody requiring one! On the contrary, it is the Democratic Party that demands conformity to their abortion agenda—their radical pro-abortion platform was implemented by their outrageous undemocratic denial of any opportunity to Pennsylvania Governor Bob Casey to address their convention in New York last summer—because he is pro-life and the delegates could not abide hearing his remarks. I'm sure everyone knows the Democrats have unshamefacedly proclaimed a pro-abortion litmus test for any judicial nominee. At our convention in Houston, Lynn Martin, Nancy Johnson, Governor William Weld—all staunch and outspoken advocates of women's right to choose abortion—were prominently featured addressing us. It is axiomatic that any upwardly mobile Democrat must support the abortion ethic or political ostracism will follow. I say that's sad—and I want room in my party for all pints of view—but I want the opportunity to debate my beliefs and advocate them freely in the fullest democratic spirit—and that can happen only in our party.

I'm proud to be a Republican. I'm proud of my party—we express the best that is in the American people—it would be a bitter irony, it would be a historic tragedy if some of us decided to change our party to a road-show version of the party that, in my opinion, has lost its way.

#### THANKING BARBARA CALABRESE GALLO FOR LONG AND DEDICATED SERVICE

Mr. WARNER. Mr. President, I rise today to thank a long-time staff member for almost 14 years of dedicated and loyal service.

Barbara Calabrese Gallo, a native of New Jersey and a graduate of Fairleigh Dickinson University, worked on my first campaign for the U.S. Senate in 1978. Shortly after I came to the Senate in 1979, Barbara became the first Republican woman Doorkeeper of the Senate. In March 1980, I asked Barbara to join my personal staff to handle all of my front office duties—a position that we all recognize as especially challenging. After 3 years, in February 1983, Barbara was promoted and became the legislative staff assistant to my national security assistant. She performed admirably in that position until October 1987, when she joined the staff of the Senate Armed Services Committee, where I served as ranking Republican member. Since then, Barbara has served as staff assistant to the deputy minority staff director of the committee.

Barbara has now accepted a position as a legislative affairs officer with the United States European Command Headquarters located in Stuttgart, Germany, the first civilian employee to occupy this position. This opportunity will allow Barbara to fulfill a longtime dream of living in Europe, and will permit her to be near her daughter, who recently married and relocated to Spain. It will also permit

her to be closer to her beloved Italy, the homeland of her ancestors.

Barbara has long been active in Italian-American circles. She has served as trustee of the International Lodge of the Order of the Sons of Italy in America; as vice-chairman of the National Organization of Italian-American Women; and as a member of the National Italian-American Foundation.

Republicans in Virginia will sorely miss Barbara, for she devoted many of her off-duty hours working for Republican campaigns and the Republican Party. In the past, Barbara served as area chairman of the John Dalton for Governor campaign; area chairman of the FRANK WOLF for Congress campaign; Fairfax County coordinator of my first campaign for the Senate; a member of the Fairfax County Republican Club; the president of the Reston Republican Club; a member of the City of Alexandria Republican Committee; and as a volunteer in the Bush for President campaign.

On top of the long hours in the Senate, her activities with the Italian-American Community, and with the Republican Party, Barbara also found time to participate with the Alexandria Volunteer Bureau, the Art Deco Society, and the Little Theater of Alexandria.

Mr. President, I thank Barbara for her 14 years of dedicated service to the U.S. Senate and to this Senator. I wish her all the best in her new position in Europe, and in all her future endeavors.

#### BTU TAX IS BAD FOR SMALL BUSINESS AND AGRICULTURE

Mr. PRESSLER. Mr. President, the Btu tax is a b-a-d tax—bad for small business, bad for farmers and ranchers, bad for consumers, bad for States like South Dakota, and bad for the international competitiveness of our country. Mr. President, it's just plain bad.

How many other countries impose Btu taxes on their citizens? None. The reasons why are clear. The Btu tax is an administrative nightmare. It is self-defeating. In fact, some European nations dismissed a Btu tax because they feared it would hurt their international competitiveness.

Mr. President, if enacted, the Btu tax would fall directly on small business owners, farmers, and ranchers. Let me explain.

The Btu tax would make our businesses less competitive. This energy tax would increase operating costs for U.S. producers. As a result, our exports would become more expensive and less competitive. Fewer American goods sold abroad translates into less production at home. That means fewer new jobs and slower economic growth. Small businesses—especially those in the early stages of exporting—would be driven home and could be put out of business altogether.

This "Big Tax on U" is estimated to cost our country as many as 610,000

jobs. The Tax Foundation estimates the job loss in my home State of South Dakota alone would be almost 1,200. There is absolutely no way job losses in small businesses can be avoided if the Btu tax is enacted.

Mr. President, over the years, I have found that one often must go beyond the Washington media to determine what the President is really thinking and saying. Take South Dakota as an example. The Sioux Falls Argus Leader, in an article titled "President Backpedals on Btu Tax," recently reported that President Clinton "is rethinking his proposed Btu tax, acknowledging that he didn't realize the impact it would have on the Nation's farmers." Let me repeat: He did not realize the impact his Btu tax would have on the Nation's farmers. How could the Btu tax not hurt farmers? Mr. President, I ask unanimous consent that two Argus Leader articles, together with a statement by the South Dakota Farmers Union, be printed in the RECORD at the conclusion of my remarks.

The Btu tax would be devastating for agriculture. According to South Dakota Agriculture Secretary Jay Swisher, the proposed Btu tax would cost the average farmer between \$2,000 and \$3,000. This tax would mean an 8.3 cents per gallon increase for diesel fuel, 2.3 cents per gallon for propane, 7.5 cents per gallon for gasoline, and a few more cents per kilowatt hour for electricity. This tax would come directly off the bottom line for our farmers. It could not be passed on to others.

I hope my colleagues in the Senate and in the House—especially those from farm States—will join us in stripping this tax from the administration's tax package. As South Dakotans and other Americans learn more about this plan and the Btu—which some have dubbed "Beyond Tax Understanding"—tax, they are growing increasingly unhappy. My constituents, as well as those of many of my colleagues, are demanding that we reduce the deficit by cutting spending, not raising taxes—especially unfair taxes like the Btu tax.

In addition, Mr. President, this is a tax on consumers and the middle class. Most families pay more for energy indirectly through goods and services than directly in their utility and fuel bills. Once imposed, the Btu tax would be passed on throughout the production chain. Proponents argue that the Btu tax would be hidden from consumers. Consumers may not see this tax, but they would certainly feel it, from the gas station to the grocery store.

The American people should be aware that the looming danger from this type of stealth tax is immense. It attempts to shield the true costs of government spending from the radar screen. If left undetected, it would allow the tax-and-spend ways of Congress to continue. The Btu tax is indexed for inflation and will increase automatically each year.

Even worse, future hikes in the Btu tax above the indexing could easily be

pushed through Congress. After all, hidden taxes are easy to increase. How many more tax increases can our economy withstand? Spending cuts are hard to make, but they are absolutely necessary. We must make tough choices.

As Paul Merski, an economist with Citizens for a Sound Economy has said, "For the majority of American families already stretching their budgets, the higher prices, lower wages, and increased danger of job loss associated with President Clinton's proposed Btu tax would mean a tougher struggle to maintain their standard of living. Imposing new taxes of any kind will only drain the energy from working families and the economy." Mr. Merski is absolutely correct.

Mr. President, I cannot think of a single good thing to say about the Btu tax, with the possible exception that it is unique and creative. As I mentioned, no other country in the world imposes such a tax. However, creativity would be better applied to finding ways to cut Government spending—not creating new ways to pick our taxpayers' pockets. Let us focus our attention in that direction. Let us kill the Btu tax before it kills America's economic growth.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### WIESE SAYS OVER-TAXED FARMERS CAN'T AFFORD BTU TAX

**HURON.**—South Dakota family farmers are already over-taxed and cannot afford the additional burden of President Bill Clinton's proposed Btu tax, according to Acting Farmers Union President Dennis Wiese.

"South Dakota farmers and ranchers have already been hit with huge increases in property taxes," Wiese said. "We simply cannot afford the additional costs now estimated for the Btu tax."

The South Dakota farm leader cited recent estimates that the Btu tax would reduce net farm income by about \$2,400 per year on a typical 600-acre farm in southeast South Dakota.

"We are already faced with grain prices that are dramatically reduced from a year ago and continuing adverse weather conditions," Wiese said. Wiese noted that the U.S. Department of Agriculture has estimated 1993 net farm income will be \$42 to \$48 billion, down from \$51 billion in 1992. That is a 17 per cent drop in income combined with an estimated 2 per cent increase in farm input costs.

"President Clinton has spoken again and again on the importance of establishing a more progressive tax system and of creating more tax fairness," Wiese said. "There is simply no way that the Btu tax can be reconciled with that philosophy."

"Like all Americans, South Dakota family farmers and ranchers are willing to participate in shared sacrifice to reduce the federal budget deficit," Wiese said. "However, the key word is shared. The Btu tax asks far more sacrifice from agriculture than from other segments of the economy."

Wiese said he is concerned that the media, government and the public are losing their appreciation for the role of family agriculture within the U.S. economy. "We have to change that," he concluded.

[From the Sioux Falls Argus Leader, Apr. 13, 1993]

#### ENERGY TAX COULD SOAK FARMERS (By Randy Hascall)

**VERMILLION.**—President Clinton's proposed energy tax could cost a typical farmer in southeast South Dakota more than \$2,400 a year.

Ron Thaden, Clay County extension agent, said the added cost might force some farmers to quit.

"Eventually, it's going to catch up to them," Thaden said. "I think it will really be serious for a lot of operations. They won't be able to meet costs, and they'll have to quit."

Thaden, South Dakota State University economics professor Don Peterson and Clay-Union Electric Manager Paul Roberts have projected the effect the energy tax would have on a 600-acre farm in Clay County.

The analysis addresses costs for fuel, fertilizer, herbicide, grain drying, utilities, transportation and interest. Clinton's proposal is subject to congressional changes and approval.

Roberts said he believes Clinton wants a fair distribution of taxes, but the energy tax places a heavy burden on farmers.

In addition to increased production costs, farmers could expect lower market prices, Roberts said. He said grain elevators would have to pay higher shipping costs and would pass those expenses on to farmers.

And the analysis doesn't include increases in light bills or irrigation, he said.

The proposed tax is a big concern to Vermillion farmer Robert Gilbertson.

"It's quite an astounding amount," Gilbertson said. "A user tax is tough when your living depends on it."

Gilbertson said he has taken cost-cutting steps in recent years and has reduced tillage.

"We've changed our operation drastically the last five to 10 years," he said. "There's really not an avenue left to change now."

Gilbertson said he can't afford expensive equipment necessary to reduce tillage further.

Extension agent Thaden said that even those farmers who can reduce their tillage would escape only a small portion of the increased costs. Their increase on an acre of corn might be \$5.30 instead of \$5.88, he said.

Thaden said most farmers don't realize how much the tax plan would cost them in its present form. Clinton wants the tax phased in over several years.

Greg Peton, sales manager of Vermillion Fertilizer, said production costs of ammonia would increase, and they'd be passed on to farmers. Depending on the final plan, farmers could pay from \$3.26 to \$16 a ton more for ammonia. An average farmer applies about 50 tons of fertilizer to 300 acres of corn and more than 22 tons to 300 acres of soybeans.

"Farmers would be hit twice and that's just with an energy tax," Peton said. Petroleum products in herbicide would boost those costs and tractor fuel costs also would increase.

Vermillion farmer Mark Nelson said the tax isn't fair.

"We've tried to do our share," Nelson said. "There's such a fine line on farming profit as it is. So many costs are predetermined—herbicide, fertilizer, utilities—that there's not much we can do."

#### ENERGY TAX IMPACT

This is an estimate of the impact the Clinton administration's proposed fuel tax would have in its third year of phase-in on a typical 600-acre farm in southeast South Dakota.

	Cost/acre	Corn	Beans	Alfalfa
Fuel		\$1.21	\$1.00	\$1.59

	Cost/acre	Corn	Beans	Alfalfa
Fertilizer		\$1.35	\$0.29	\$0.72
Herbicide		\$1.97	\$1.11	\$0.17
Drying		\$0.67	\$1.00	\$0.00
Utilities		\$0.07	\$0.02	\$0.02
Interest		\$0.42	\$0.19	\$0.20
Transportation		\$0.19	\$0.09	\$0.40
Impact/acre		\$5.88	\$2.70	\$3.10
Acres		260	285	55
Impact/crop		\$1,529	\$770	\$171

Source: Don Peterson, SDSU; Ron Thaden Clay County Extension Office; Paul Roberts, Clay-Union Electric. Based on yields of: corn, 100 bu.; soybeans, 40 bu.; hay, 5 0/1.

[From the Sioux Falls (SD) Argus Leader, May 12, 1993]

#### PRESIDENT BACKPEDALS ON BTU TAX

(By David Krans)

**BENSENVILLE, ILL.**—President Clinton said Tuesday that he is rethinking his proposed Btu tax, acknowledging that he didn't realize the impact it would have on the nation's farmers.

South Dakota farmers have called the proposed a killer that taxes energy content of oil, coal and electricity based on energy content. They said it could drive them out of business. State farmers say the price for their crops compared with the cost of production would no longer yield a profit.

It would increase the farmer's cost for gasoline, diesel fuel, heating oil, grease and oil.

Clinton also said he was looking at the Indian gaming issue that has brought some controversy in South Dakota and other states, but made no commitments other than to direct a study of the federal laws that govern what is rapidly increasing economic growth for reservation communities.

He said some regulatory changes may be needed, but gave no indication that he was in favor of curtailing or seriously limiting the activity.

The president made the comments during a press conference with five writers from South Dakota and North Dakota, following a speech on education to 2,000 students and guests at Fenton High School in Bensenville.

"What we need to do is look at all elements of this program... so this thing does not fall unevenly on anybody," Clinton said.

A solution that could lighten the impact of the Btu tax according to the president, might be changing the expensing provisions of the tax code.

"We had to do something dramatic early to be serious about reducing the deficit. It not only had to work, but it had to be deemed to be working by the financial community to try to get interest rates down," Clinton said.

Three things were necessary in weighing deficit reduction if it were to have credibility, he said. They included specific spending cuts rather than proposed caps; a reversal of the 1980s, where taxes were lowered on wealthy people and raised on the middle class; third, an energy tax because the United States taxes energy at a lower level than other countries.

But Clinton admits that he is worried about the impact to agriculture.

"Now, I'm very concerned about the farmers. I come from a state with a lot of farmers. This issue never came up in this way, believe it or not, even though we had a lot of people sit around the table from farm states before we put this package together," the president said.

He said the carbon tax on the burning of fossil fuel, which would have an impact on power plants, was discarded because they thought that it was unfair to the coal-producing states. Those from northern areas favored a gas tax because of how high gas taxes are in every other country. That was discarded because of the impact on rural people west of the Mississippi, he said.

Clinton said he thought the BTU tax would benefit the nation's environmental policy most with the broadest base.

"I think the thing that missed everybody's attention was that agriculture was exempt from the other energy taxes, primarily the gas tax. So it came as a full hit on agriculture."

Talks have begun with administration officials and rural state congressional delegations about other avenues to explore in place of the BTU tax, Clinton said.

"I'm committed to the whole congressional delegation from both these states, that we continue to work on it. We are going to try to get it intact without having a big session. We are struggling for a way to help agriculture without just creating an exemption and a tax which might cause it to fall because then you have people from other parts of the country that will be saying, 'Give me an exemption.' The last thing we want to do is accelerate the decline of the family farm."

On the gaming issue, Clinton said Bruce Babbitt, his interior secretary, is evaluating the impact of changes in federal laws on Indian gambling. He said there is some support from governors to limit or eliminate the laws.

"A lot of people are quite unhappy and some governors are very concerned," he said.

"The fear is that, if Indian gaming were broadened, they would have no choice but to open up gaming."

"The president said he was inclined toward some legislation by Congress to determine what the balance of forces should be."

"Gambling is not an unmixed blessing because it is rooted in the idea that you can get something for nothing, but you can't. As long as it's confined and it's limited and we are all having a lot of fun and nobody is under any illusion, I don't know that it does too much harm to society. But it can never be the central basis for which you build economic self-sufficiency," Clinton said.

He also said gambling does not communicate the right values.

"Philosophically I don't have much objection to some modest expansion of this, but I don't believe that this can or should be seen as a salvation of the Indian tribes."

Clinton admitted that he didn't have a great knowledge about South and North Dakota, but some of the nation's worries, like health care, have a major impact on this region, and he said he would take care not to let them fall through the cracks because of their small population.

#### CONCERNING THE PAPERS OF ASSOCIATE JUSTICE THURGOOD MARSHALL

MR. PRESSLER. Mr. President, I have been watching with great interest the news reports this week concerning our Library of Congress and the papers of the late Justice Thurgood Marshall. Although the debate has focused on what some refer to as the Library's abuse of discretion, I think it is time to remind ourselves of the Library's responsibility to its donors and to researchers.

In the first place, the Library has no real discretion regarding the Justice's papers. What the Library has is a contract with the late Justice that must be honored. Although I can understand and sympathize with those who want to protect the late Justice and the Supreme Court of the United States, I cannot believe that anyone would ask

the Library to ignore its duty to Justice Marshall in order to save others from possible embarrassment.

In the stories I have seen in the press, there are many who say that they know what Justice Marshall really wanted when he donated his papers to the Library. Although the anecdotes recounted are interesting, they are hardly proof of the Justice's wishes regarding access to his papers. The Library, on the other hand, has provided exhaustive documentary and other evidence of its negotiations with Justice Marshall, as well as the recollections of the Librarian of Congress and two other Library officials who attended the October 1991 meeting at which Justice Marshall agreed to donate his papers to the Library.

Incredibly, a number of the Library's critics also have suggested that Library officials should allow only certain types of researchers to have access to the papers. Who would these approved researchers be? The suggestions of critics do not tell us that; rather, they tell us only what they would not be: journalists and lawyers. Can we ask librarians in the Manuscript Reading Room to decide which citizens will be allowed to consult the papers of Washington, Jefferson, Lincoln, countless former Members of Congress, and Federal judges? Would we in the U.S. Senate approve of our Library making such distinctions? I think not.

I urge my colleagues to think carefully about the issues that have been aired so publicly in the press. This is no time to let our sympathy make us shirk our responsibilities to the right of American citizens to free access to information.

Mr. President, I ask unanimous consent that the following items appear in the RECORD as part of my statement: a factsheet on access to Thurgood Marshall's papers; the instrument of gift whereby Justice Marshall's papers were given to the Library of Congress; a chronology of the accession of Justice Marshall's papers; a summary overview of other Supreme Court papers for which unrestricted access has been permitted; and a statement of the Librarian of Congress yesterday on this entire matter.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### FACTSHEET—ACCESS TO THURGOOD MARSHALL'S PAPERS

Five different issues are raised by William Coleman and others who urge the closing of access of Marshall's papers.

1. That the Library is not following typical practice in the administration of these papers.

Fact: We have followed typical practice. The typical practice is to confer with donors to determine their wishes, and incorporate those wishes into the instrument of gift. The result of this practice varies, as individuals have stipulated different types of access. (Attachment 1)

2. That unrestricted access to the papers was not the intention of Marshall.

Fact: Marshall agreed to unrestricted access to researchers after his death, and to

limited access, with his permission, during his lifetime. He made his intentions clear at his meeting with Billington, Wigdor and Ham; he reviewed the instrument of gift; he made no revisions and returned this document signed. (Attachment 2)

3. That allowing journalists access to the papers is not consonant with the agreement, because journalists are not "researchers or scholars engaged in serious research."

Fact: "Researchers or scholars" are understood to be those who have a specific research project, often leading to publication. Manuscript Division collections are not open to the general public—e.g., undergraduates and tourists just wanting to look at famous documents. Coleman's position "that no journalist can have a serious purpose is simply untenable. (Attachment 3)

4. That open access by researchers and scholars to the Marshall papers will jeopardize LC's ability to collect the private papers of public figures in the future.

Fact: The Library has no choice but to comply with the terms of the agreement. The fact that LC does comply, in this case as scrupulously as in all other cases despite the unwanted publicity it has caused, is in fact the best possible argument for a donor to feel that his or her wishes will be carried to the letter.

5. That Dr. Billington made assurances to Justice Marshall that only scholars would have access to his papers.

Fact: Neither the Librarian nor any other official from the Library made such an assurance.

#### INSTRUMENT OF GIFT

I, Thurgood Marshall (hereinafter, Donor), hereby give, grant, convey title in and set over to the United States of America for inclusion in the collections of the Library of Congress (hereinafter, Library), and for administration therein by the authorities thereof, a collection of my personal and professional papers, more particularly described on the attached schedule.

I hereby dedicate to the public all rights, including copyrights throughout the world, that I may possess in the Collection.

The papers constituting this gift shall be subject to the conditions hereinafter enumerated:

1. Access. With the exception that the entire Collection shall be at all times be available to the staff of the Library for administrative purposes, access to the Collection during my lifetime is restricted to me and to others only with my written permission. Thereafter, the Collection shall be made available to the public at the discretion of the Library.

2. Use. Use of the materials constituting this gift shall be limited to private study on the premises of the Library by researchers or scholars engaged in serious research.

3. Reproduction. Persons granted access to the Collection may obtain single-copy reproductions of the unpublished writings contained therein.

4. Additions. Such other and related materials as the Donor may from time to time donate to the United States of America for inclusion in the collections of the Library shall be governed by the terms of this instrument of Gift or such written amendments as may hereafter be agreed upon between the Donor and the Library.

5. Disposal. It is agreed that should any part of the Collection hereinabove described be found to include material which the Library deems inappropriate for permanent retention with the Collection or for transfer to other collections in the Library, the Library may dispose of those materials in accordance with its procedures for the disposition of ma-

terials not needed for the Library's collections.

In witness whereof, I have hereunto set my hand and seal this 24th day of October, 1991, in the city of Washington, DC.

THURGOOD MARSHALL.

Accepted for the United States of America.

JAMES H. BILLINGTON,

*The Librarian of Congress.*

NOVEMBER 8, 1991.

# ACCESSION OF JUSTICE THURGOOD MARSHALL'S PAPERS

## CHRONOLOGY

Jan. 29, 1965: First request for Judge Marshall's papers from David Mearns, Chief, Manuscript Division.

Feb. 8, 1965: Marshall responds "I have no personal papers. They all remained in the files of the N.A.A.C.P. and the N.A.A.C.P. Legal Defense and Educational Fund, Inc."

Oct. 4, 1977: Another LC Solicitation, from John Broderick, Chief, Manuscript Division says "Mutually acceptable restrictions may, of course, be placed upon the use of a collection."

July 2, 1991: JHB's solicitation after Justice Marshall first announces his retirement.

July 22, 1991: Justice Marshall writes JHB "I contemplate leaving my papers to the Library of Congress when I finally retire."

Sept. 4, 1991: JHB writes Marshall thanking him for news of July 22 and inviting him to lunch.

Oct. 7, 1991: JHB, D. Wigdor, D. Newman, Ham visit Justice Marshall in his chambers. Justice Marshall tells group that his papers will be available with his permission during his lifetime and after his death without restrictions.

Oct. 21, 1991: JHB letter to Marshall forwarding instrument of gift, "we will be happy to discuss any revisions you wish to propose. If it is satisfactory, in its current form, simply sign and return."

Oct. 24, 1991: Justice Marshall signs instrument of gift, with no changes, donating papers to the Library.

Dec. 1991-Jan. 1992: Marshall's Papers, initially 147,800 items (eventually 173,700), arrive at Library of Congress.

Feb. 27, 1992: JHB letter to Marshall returning the completed instrument of gift, thanking him again and saying we "are certain that researchers visiting the Library of Congress to use them through ensuing generations will agree that these papers embody the life and career of an American ceaselessly at work toward his ideal of a just society."

June 3, 1992: Processing begins on Marshall's Papers.

June 30, 1992: Hutson letters to Marshall and other justices asking them to review and approve staff essays about their papers for publication in 1991 Acquisitions Report.

July 8, 1992: McHale calls Janice Ruth (Manuscript Div) to say Marshall "is pleased with it—no problem—no changes needed."

July 6-15, 1992: Other justices indicate reluctance to Ruth about publication of essays relating to their holdings; Manuscript Division decides not to publish them.

Sept. 30, 1992: Processing completed; shortly thereafter, Ham calls McHale to report that papers are ready for use.

Jan. 24, 1993: Marshall's death; his papers become available to researchers.

Feb. 2, 1993: First researcher uses papers (6 researchers use papers Feb-April; Post-researcher begins research May 5).

Feb. 23, 1993: JHB letter to Mrs. Marshall following his attendance at Marshall's funeral, expressing condolences, asking her to visit LC and see how we processed the collection, asking for donation of additional material, and enclosing a copy of the Manuscript

Div 1991 acquisitions report describing our Marshall holdings.

There were no conversations between Library staff and Marshall and his staff between October 7, 1991, and October 21, 1991. The Library staff members who attended the October 7, 1991, meeting with Marshall are very clear that he wanted his papers open to researchers upon his death. We received no requests for access to Justice Marshall's papers during his lifetime. We do not know whether any such requests were directed to the Justice personally.

## ACCESS TO THE PAPERS OF SUPREME COURT JUSTICES

### COLLECTIONS WITH UNRESTRICTED ACCESS AFTER THE DEATH OF THE JUSTICE

Burton—researchers could have access to his papers during his lifetime with his permission; after death, access became unlimited.

Douglas—materials received during his lifetime by the Library where made immediately available to researchers after his death; additions to the collection received through bequest were available without restrictions after five years.

Goldberg—access unrestricted from the moment of receipt on deposit by Library, even during Goldberg's life. Goldberg established an automatic conversion to a gift on the first anniversary of the deposit.

Marshall—access to collection with permission during his lifetime; after his death, open access.

### COLLECTIONS WITH RESTRICTIONS AFTER THE DEATH OF THE JUSTICE

Black—(donated by heirs, 1973) access to "entire collection" and publication with permission of executors (intent seems more to protect intangible rights than to withhold for other reasons)—access to "files of the Supreme Court" until death or retirement, whichever first, of other participating justices or justices active on Court at time case decided.

Brennan—access to "legal files" and "correspondence" with permission of the donor, then unrestricted access after his death—"personal annual review of the team's work" closed during his lifetime & the lifetime of the other justices who participated in the decisions.

Frankfurter—access closed for 16 years from the date of "each paper."

Jackson—(donated by heirs in 1964)—access with permission for 5 years after the date of the instrument of gift, then unrestricted access.

O'Connor—access with permission during her lifetime, then unrestricted, except for case files which are closed as long as any participating justice continues to serve on the Court.

Rutledge—(donated by his wife in 1980)—open immediately upon her gift.

Stone—(donated by his wife, in 1949)—access with permission of his widow or children between 1949 and 1975, then unrestricted.

Warren—while papers were on deposit, access was granted with permission of the Justice; the terms of his will stipulated that the papers would be closed for ten years after his death.

White—access with his permission during his lifetime; open "to the public" ten years after his death.

## STATEMENT BY JAMES H. BILLINGTON, THE LIBRARIAN OF CONGRESS, CONCERNING THE PAPERS OF ASSOCIATE JUSTICE THURGOOD MARSHALL, MAY 26, 1993

We were surprised and distressed by the concerns voiced by the Marshall family, Chief Justice Rehnquist, the Hon. William

Coleman, and others over the opening of the papers of the late Thurgood Marshall, Associate Justice of the Supreme Court and a giant figure in the history of the civil rights struggle.

I have met today with the Marshall family, the Chief Justice, and Mr. Coleman to discuss their concerns, review the Library's discussion and correspondence with Justice Marshall, and explain the Library's guiding philosophy on access to its collections.

We have conducted a thorough review of our internal documents and dealings with Justice Marshall. We remain confident that we are carrying out his exact intentions in opening access to his papers after his death on January 24.

In so doing, we have followed traditional library practice of strict adherence to the donor's explicit instructions. This has been our practice with collections left to the Library by all donors, including twelve other recent justices of the Supreme Court. To do otherwise is a breach of contract and a violation of the trust placed in the Library by the donor.

Requests in the wake of recent articles to impose additional restrictions on Justice Marshall's papers run counter both to this basic principle of custodianship and to Justice Marshall's expressed intentions to us. We have the greatest sympathy for Chief Justice Rehnquist, Justice Marshall's family, and others who have voiced concern. But the Library must honor the expressed wishes of one of our great jurists. Open access to the papers, as called for in Justice Marshall's instrument of gift, must be maintained.

Crucial to a free and democratic society is open access to information, limited only by formal secrecy classification and by specific restrictions laid down by the donors of papers.

In the case of Justice Marshall, following his death, the use of the papers "is limited to private study on the premises of the Library by researchers or scholars engaged in serious research."

One of the concerns that has been raised is that journalists ought not to be considered researchers. The term "researchers," under Library policy, has always referred to adults working on specific research projects, be they authors, journalists, or lawyers. Justice Marshall was aware that journalists used Library manuscript collections; indeed, during our meeting on his papers in October 1991, he mentioned with approval to me a particular book by a journalist on a fellow Supreme Court justice using his papers in the Library.

All who seek to use the Marshall papers—or any other open papers in the Library's manuscript collection—must register, present a photo I.D., state their names, addresses, institutional affiliations, and their research projects. Casual tourists and high school students are turned away. Undergraduates are normally encouraged to go elsewhere, although any adult may use the Library's general collections.

There has been some confusion over the "discretion" allowed to the Library under the terms of Justice Marshall's instrument of gift, signed October 24, 1991. As in the case of other collections, the "discretion" sought and obtained by the Library involved only the technical determination by our archival staff of when the papers were organized and ready for use. It is an abuse of such "discretion" to impose restrictions on access other than those proposed by the donor.

Under the instrument, his papers were to be made available during his lifetime to researchers "only with my written permission." After his death, "the collection shall be made available to the public at the discretion of the Library."